Accordingly, 7 CFR Part 46 is amended as set forth below:

PART 46—[AMENDED]

1. The authority citation for Part 46 continues to read as follows:

Authority: Section 15, 46 Stat. 537; 7 USC 499o.

2. Section 46.6 is revised to read as follows:

§ 46.6 License Fee.

The annual license fee is three hundred (300) dollars plus one hundred fifty (150) dollars for each branch or additional business facility operated by the applicant exceeding nine. In no case shall the aggregate annual fees paid by any applicant exceed three thousand (3,000) dollars. The Director may require that the fee be submitted in the form of a money order, bank draft, cashier's check or certified check made payable to Agricultural Marketing Service. Authorized representatives of the Department may accept fees and issue receipts therefore.

Done at Washington, DC, on August 11, 1987.

William T. Manley,

Acting Administrator.

[FR Doc. 87-18610 Filed 8-13-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS Number: 1043-87]

Nonimmigrant Classes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Clarification.

SUMMARY: This notice clarifies certain questions raised concerning the amendment to 8 CFR 214.2, issued by the Immigration and Naturalization Service December 3, 1986 and published in the Federal Register on December 9, 1986, at 51 FR 44266. This notice also explains the basis for the foregoing amendment.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street NW, Washington, DC 20536 Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: In the December 9, 1986 Federal Register, 51 FR 44266, the Immigration and Naturalization Service (the Service) published an amendment to 8 CFR 214.2. This amendment added paragraph (b)(3), barring classification and admission as business visitors of aliens seeking to enter the United States to perform certain building and construction work. The background and provisions of this amendment are described in the above-noted Federal Register.

1. On April 14, 1987, the Department of State published in the Federal Register, 52 FR 12001, a notice of proposed rulemaking, which would amend its regulations regarding visa issuance to temporary business visitors to conform to the Service's regulations. In that proposal, the Department of State stated that concern had been raised as to whether certain language in the preamble of the Service's amendment would suggest an exception to the denial of B-1 nonimmigrant status for building or construction workers entering the United States for the purpose of performing after-sale installation and service, or warranty work after installation. The Department of State further stated that it had received from the Service confirmation that no such exception was intended.

In view of a further comment received by the Department of State in response to its proposed rule, we wish to confirm the Service's intent that the December 9, 1986 amendment to 8 CFR 214.2(b) precludes B-1 nonimmigrant status to any alien seeking to enter the United States to perform building or construction work, whether on-site or in-plant, subject only to an exception for supervision and training as described in the amendment. The December 9, 1986 amendment does not allow an additional exception for building or construction work incident to after-sale installation and service or other warranty work after installation.

2. The December 9, 1986 amendment was a modification of Operations Instruction 214.2(b)(5), which was issued under section 101(a)(15) of the Immigration and Nationality Act (Act), 66 Stat.166. Operations Instruction 214.2(b)(5) interpreted Section 101(a)(15) of the Act as applied to the installation, servicing or repair of industrial or commercial equipment or machinery purchased from a foreign supplier. Where the conditions of the Operating Instruction are met—in particular, where the alien performing the installation, servicing or repair makes the trip within the first year after the sale; where the alien possesses specialized knowledge relating to the machinery; and where the alien is paid abroad by the foreign seller and his services are supplied as part of the sale—there is assurance that the alien is basically performing a foreign job for a foreign employer as part of that employer's international business, rather than displacing U.S. workers from a U.S. job. And since the alien in this situation is performing a foreign job rather than a domestic job, his admission is not subject to the provisions of section 101(a)(15)(H) of the Act, which was designed to protect American jobs.

However, these considerations are not applicable to building and construction work. In the special conditions of this industry it is more reasonable to regard all building and construction work as representing domestic employment, even where the worker is employed by a foreign company and paid abroad. Building and construction work has traditionally been viewed as a local activity, and because of its unique status has received special treatment under federal labor law. *Woelke & Romero Framing Inc.* v. *NLRB*, 456 U.S. 645 (1982); *NLRB* v. *Iron Workers, Local 103*, 434 U.S. 335 (1978). Each construction project tends to be "a distinct entity." The Impact of the Taft-Hartley Act on the Building and Construction Industry, 60 Yale L.J. 673, 676, 677 n.24 (1951). Congress has recognized that "the employees of various subcontractors [at a single construction project] have a close community of interest, and that the wages and working conditions of one set of employees [at the project] may affect others." *Woelke & Romero, supra*, 456 U.S. at 661-2. In light of these factors, we believe it is reasonable to regard building and construction workers as being employed at the construction site, even though their employer be located abroad and they may otherwise meet the conditions of the Operations Instruction. For these reasons, we believe these workers are performing jobs that are subject to the provisions of section 101(a)(15)(H) of the Act, designed to give American workers protection regarding American jobs, and cannot avoid these protective provisions by utilizing the temporary business for visitor classification.

Dated: August 11, 1987.

Delia B. Combs,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87-18581 Filed 8-13-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-92-AD; Amdt. 39-5706]

Airworthiness Directive; British Aerospace Model BAe-146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe-146 series airplanes, which requires an inspection and/or functional test of certain electro/pneumatic solenoid valves in the stall identification system, and replacement, if necessary. This amendment is prompted by several reports of internal corrosion within the solenoid assembly, which may cause the valve to become defective. This condition, if not corrected, could result in an unannunciated failure of the stall identification system.

EFFECTIVE DATE: August 31, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition, which may exist or develop on certain British Aerospace Model BAe 146 airplanes. There have been several reports of internal corrosion within electro/pneumatic stall identification system solenoid valves. This condition, if not corrected, could result in a defective valve, leading to an unannunciated failure of the stall identification/prevention system.

British Aerospace has issued Service Bulletin BAe-146, 27-58, Revision 1, dated November 14, 1986, which describes procedures for inspection and test of the electro/pneumatic valves, and replacement, if necessary. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certified in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires inspection and test of electro/pneumatic solenoid valves, and replacement, if necessary, in accordance with the British Aerospace service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedures hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Regulations (14 CFR 39.13) are amended as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe-146 airplanes, as listed in British Aerospace BAe-146 Service Bulletin 27-58, Revision 1, dated November 14, 1986, certified in any category. Compliance is required as indicated, unless previously accomplished.

To prevent an unannunciated failure of the stall identification system, accomplish the following:

A. Within 14 days or prior to the accumulation of 125 landings, whichever occurs first after the effective date of this AD, inspect the electro/pneumatic solenoid valve to identify the serial number and modification state in accordance with BAe-146 Service Bulleting 27-58, Revision 1, November 14, 1986. If the valve is identified as suspect, accomplish either of the following:

1. Prior to further flight, replace the affected valve with a modified valve identified in accordance with the service bulletin; or

2. Prior to further flight, and thereafter at intervals not to exceed 14 days or 125 landings, whichever occurs first, functionally test the suspect valve in accordance with the Accomplishment Instructions of the service bulletin.

a. Valves found defective must be removed prior to further flight and replaced with modified valves or a serviceable suspect valve.

b. The serviceability of suspect replacement valves must be determined by performing the above mentioned functional test upon installation.

B. Replacement of suspect valves with modified valves identified in accordance with BAe-146 Service Bulletin 27-58, Revision 1, dated November 14, 1986, constitutes terminating action for the requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer, may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 31, 1987.

Issued in Seattle, Washington, on August 5, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-18534 Filed 8-13-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-24778; File No. S7-21-86]

Customer Protection Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to its customer protection rule under the Securities Exchange Act ("Act") in connection with repurchase agreements where the broker-dealer agrees to retain custody of the securities that are subject to those agreements ("hold in custody repurchase agreements"). The amendments to the rule will require registered broker-dealers to obtain repurchase agreements in writing, to make specific disclosures regarding certain risks associated with hold in custody repurchase transactions and to disclose that the Securities Investor Protection Corporation ("SIPC") has taken the position that coverage under the Securities Investor Protection Act of 1970 is not available to repurchase agreement participants. The amendments further require registered broker-dealers to maintain possession or control of securities subject to hold in custody repurchase agreements, except that possession or control during the trading day is not required if certain conditions are met.

EFFECTIVE DATE: January 31, 1988.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Julio A. Mojica, (202) 272-2372, or Michael P. Jamroz, (202) 272-2398, Division of Market Regulation, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In September of 1986, the Commission proposed amendments to its financial responsibility rules relating to repurchase and reverse repurchase agreements. Those proposed amendments were in response to the failures of several government securities dealers which caused substantial harm to public investors through fraudulent practices.[1] The proposal included amendments to the Commission's net capital rule, securities count and recordkeeping rules and customer protection rule, Securities Exchange Act Rule 15c-3. Subsequently, Congress enacted the Government Securities Act of 1986 ("GSA"), which authorized the Department of the Treasury ("Treasury") to adopt financial responsibility and customer protection rules for all brokers and dealers of U.S. government securities, including those firms currently registered with the Commission. The Treasury has since adopted rules that, in large part, incorporate existing Commission financial responsibility rules. The Treasury's customer protection rule requires compliance with Rule 15c3-3, but modified the provisions that were proposed in the September Release. In Securities Exchange Act Release No. 24554 ("the June Release"), the Commission proposed for comment amendments to Rule 15c3-3 that would substantially conform to the Treasury's temporary customer protection rule. Today, the Commission adopts those amendments with certain modifications to conform to the Treasury's customer protection rule as adopted in final form on July 24, 1987.[2]

Unrelated to these changes, the Commission is deleting the word "last" from the wording of Item 9 of the Formula for Determination of Reserve Requirements in Rule 15c3-3a to correct an error in the Code of Federal Regulations.

I. Discussion

The proposed amendments to Rule 15c3-3 announced in September were made in response to, among other things, fraudulent practices of both unregistered and registered government securities broker-dealers involving repurchase agreements where the broker-dealers retained possession of the securities underlying the repurchase agreements ("hold in custody repo"). In a repurchase agreement ("repo"), the broker-dealer sells securities and agrees to repurchase the same or similar securities at a later date. In a hold in custody repo, the broker-dealer receives the funds from the sale of the securities but retains control of the securities. Some of the failed broker-dealers allegedly used those securities in their business although they had been sold to the repo counterparties. Those counterparties will be exposed to loss if coverage under the Securities Investor Protection Act of 1970 ("SIPA") is not available.[3] The position of the Securities Investor Protection Corporation is that persons engaging in repurchase and reverse repurchase agreements are not customers of the broker-dealer within the meaning of SIPA and are therefore not covered under SIPA.[4]

The amendments to Rule 15c3-3 proposed in September would have required broker-dealers that enter into hold in custody repos to: (i) Disclose the rights and liabilities of the parties to hold in custody repos including a statement that SIPC has taken the position that SIPA coverage is not available to repo counterparties; (ii) disclose to the counterparty which securities are being held on his behalf under the hold in custody repo; and (iii) maintain possession and control of those securities free of lien, except for clearing liens imposed during the trading day for hold in custody repos exceeding $1 million.

Subsequent to the Commission's original proposal, the Treasury, pursuant to authority recently granted to it under the GSA, adopted temporary financial responsibility rules for all brokers and dealers in U.S. government securities in May of 1987. The Treasury's temporary customer protection rule altered the requirements proposed by the Commission. In essence, the Treasury's temporary regulation included the Commission's amendments to Rule 15c3-3 except that: (i) The Treasury rule required broker-dealers to obtain written hold in custody repurchase agreements and to make specific disclosures in those agreements regarding the broker-dealer's use of securities obtained pursuant to hold in custody repos during the trading day; and (ii) the Treasury rule did not require intra-day possession or control of securities that were subject to hold in custody repos of under $1 million on any day on which the broker-dealer obtained the specific prior consent of

[1] *See* Securities Exchange Act Release No. 23602 (September 4, 1986), 51 FR 32858 (September 15, 1986) ("September Release").

[2] 52 FR 27910 (July 24, 1987).

[3] Under section 9(a) of SIPA, advances for customer claims are limited to $100,000 for cash claims and $500,000 for claims for securities. To the extent the claims of repo counterparties exceed those limits, those counterparties will be exposed to loss even if SIPC coverage is extended.

[4] The United States District Court for the District of New Jersey decided in *Cohen* v. *Army Moral Support Fund (in re Bevill, Bresler and Schulman)*, Adv. Proc. No. 85-21-3 (slip op.) (D.N.J. Oct 23, 1986), that repo transactions were purchases and sales rather than secured loans. The practical effect of this decision was to extend coverage under the Securities Investor Protection Act to repo participants within that jurisdiction. A final order in that case, however, has not yet been entered and, therefore, no appeal has been possible from the Court's determination.

the counterparty to substitution. The Commission's original proposal would have required registered broker-dealers to maintain continuous possession or control of securities subject to hold in custody repos under $1 million.

In the June Release, the Commission proposed for comment alternative amendments to Rule 15c3–3 relating to the treatment of hold in custody repos. One version was the same as the Treasury's temporary rule. The other version differed from the Treasury's rule only with respect to hold in custody repos under $1 million. The second alternative contained a continuous possession or control requirement for securities obtained under those agreements.

The Commission received one comment letter in response to its proposal.[5] In its letter, the Public Securities Association ("PSA") objected to the required confirmation of specific securities subject to hold in custody repos and the disclosure of the market value of those securities. The PSA also opposed special restrictions on hold in custody repurchase transactions under $1 million.

In designing its proposed amendments to the customer protection rule, the Commission intended to ameliorate, among other things, two weaknesses observed in the hold in custody repo market. One concern was the duplicative use of securities obtained by broker-dealers under hold in custody repos. The use of securities that were already subject to hold in custody repos was facilitated by the broker-dealers' failure to designate specific securitries to specific repos. In confirming specific securities, this allocation will have to be performed and the double use of securities will be inhibited.

The other concern was the apparent lack of understanding of hold in custody repo counterparties of their rights and liabilities. To some extent, this misunderstanding was exacerbated by the unsettled legal status of repos. As noted above, SIPC has taken the position that repos are secured loans and not purchases and sales of securities protected under SIPA. If hold in custody repos are secured lending transactions, whether and when a perfected security interest attaches are questions of local law, the answers to which are not always clear. To the extent an interest in securities subject to a hold in custody repo exists, counterparties may be frustrated in submitting claims against those securities because they are not told which securities they purchased under the repo. In many instances, broker-dealers confirm those transactions by submitting a confirmation to the counterparty that states that they have purchased "various" government securities. Because the counterparty never receives the securities, it may never become aware of which securities are subject to the agreement. In some cases, even the broker-dealer is not aware of which securities are subject to the agreement. As mentined above, this may occur when the broker-dealer fails to make the designation necessary to confirm specific securities.

The amendments to Rule 15c3–3 require broker-dealers to make basic disclosures to hold in custody repo counterparties regarding their rights and liabilities under the agreement. The amendments require that the broker-dealer inform the counterparty of SIPC's position and state to the counterparty that its securities may be subject to clearing liens during the trading day.

The amendments also require the broker-dealer to disclose the identity of the specific securities that are the subject of the agreement so the counterparty will be able to pursue any legal interest it may have in those securities in the event that the broker-dealer defaults. The broker-dealer will also be required to include the market value of those securities on the confirmation so the conterparty can more easily determine if sufficient securities have been allocated to it under the agreement. The disclosure of market value is particularly important because it is evident that in some sectors of the repo market, counterparties are measuring credit exposure by comparing the amount of funds invested in the repurchase transaction to the face value of government securities involved. The disclosure of market value of the securities subject to the repo emphasizes to those counterparties that market value, not face value, is the appropriate measure for determining credit exposure.

With respect to hold in custody repo transactions under $1 million, the Commission believes that special treatment for those transactions is not appropriate at this time. When the amendments to Rule 15c3–3 were proposed for comment in September 1986, the Commission sought to achieve its regulatory objectives with a minimum burden on the repo marketplace. The Commission learned that, in order to maximize the efficiency of the settlement process for U.S. government securities, broker-dealers needed to be able to substitute securities subject to hold in custody repos. In order for those substitutions to be performed, broker-dealers had to combine securities subject to hold in custody repos with other government securities in their clearance accounts and submit all of those securities to clearing liens during the day. However, the Commission was also aware of instances where securities subject to hold in custody repos were misappropriated. The Commission therefore proposed that broker-dealers obtain possession and control of securities that were the subject of hold in custody repo agreements exceeding $1 million at the end of each trading day. Because the Commission was concerned that smaller investors might not fully appreciate the risks involved with hold in custody repo transactions, the Commission propsed that small hold in custody repo transactions be subject to a continuous possession or control requirement.

When the Commission reproposed its amendments in the alternative in June 1987, the amendments included significant modifications to the Commission's original proposal that were included in the recently adopted Treasury's temporary rule. Both alternatives required that hold in custody repo agreements be written and include specific disclosures regarding SIPC coverage and the effects of consent to substitution by the counterparty. The alternatives differed in that one would have required continuous possession or control of securities subject to hold in custody repos under $1 million while the other proposed, in a manner identical to that required under the Treasury's temporary rule, that those securities could be used by the broker-dealer provided that prior written or oral consent of the counterparty had been received on the day of use.

The release requested comment on the enforceability of an oral consent provision but, at the same time, the Commission was uncertain of whether the benefit obtained by a continuous possession or control requirement was worth the cost to the industry of treating smaller hold in custody repos differently. The Commission was aware that broker-dealers may incur a significant recordkeeping cost in identifying those transactions. Furthermore, a continuous possession or control requirement may hinder the settlement process if the broker-dealer is unable to effect substitutions. The

[5] The Department of Treasury received 21 comment letters which the Commission considered in evaluating this proposal. The Treasury comment letters have been placed in the Commission's public files.

Commission also understands that many small hold in custody repos are entered into by large, sophisticated investors. Since hold in custody repos often represent temporary investments of available cash balances, the size of the repo is often more a function of available funds than the net worth of the investor. Finally, the Commission was concerned that the stricter segregation requirements might result in many firms refusing to effect small hold in custody repo transactions.

Some of the Commission's concerns have been addressed by modifications to its original proposal. The amendments, as adopted, require explicit disclosures regarding the risks of entering into hold in custody repos to be made in a written agreement. The counterparty will be informed of the ramifications of his consent to substitution and the exposure of his securities to clearing liens. Moreover, the Commission believes that the requirement that firms segregate hold in custody securities every night and confirm the specific securities employed in hold in custody repos should serve to protect against the double use of those securities. In light of all of the considerations, the Commission has determined that a separate standard for hold in custody repos under $1 million is not appropriate.

The Commission remains concerned about the use of free credit balances by means of hold in custody repurchase agreements. In some instances, broker-dealers have characterized free credit balances as repurchase agreements in an apparent attempt to avoid depositing those free credit balances in the Special Reserve Bank Account for the Exclusive Benefit of Customers ("Reserve Account") under Rule 15c3–3(e).[6] The Commission believes that the written agreement requirement will inhibit this practice and make smaller repo participants more conscious of the risks involved in the transaction. However, the Commission's view is that if the broker or dealer enters into a hold in custody repurchase agreement with a retail customer who has a preexisting free credit balance with the broker or dealer, the liability of the broker or dealer will ordinarily be considered to be a free credit balance for purposes of Rule 15c3–3. Customers that conduct their business with the broker-dealer on a delivery versus payment basis would not be considered retail customers for purposes of this interpretation. The Commission will continue to monitor this area and may consider imposing separate restrictions on smaller hold in custody repos in the future. The Commission has selected an effective date of January 31, 1988, to coincide with the effective date of the Treasury rule adopted in final form July 24, 1987. Between July 25, 1987 and January 31, 1988 registered broker-dealers must comply with applicable provisions of the Treasury rule.

[6] Rule 15c3–3(e) requires broker-dealers to deposit in the Reserve Account an amount as computed on a periodic basis under the Rule 15c3–3a Formula for Determination of Reserve Requirement ("Reserve Formula"). Under the Reserve Formula, the amount of the required deposit is determined by comparing the free credit balances and other funds obtained from customers to the amount by which the broker-dealer finances customer activities through the use of its own funds. Because the Commission has not taken the position that repo participants are "customers" for purposes of Rule 15c3–3, funds obtained in a repo would not be included in the Reserve Formula unless customer securities were used in the repo.

II. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. section 604 regarding the amendments to Rule 15c3–3. The Analysis notes that the objective of the amendments is to further the purposes of the various financial responsibility rules, which are designed to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers and to require broker-dealers to maintain such records as necessary or appropriate in the public interest or for the protection of investors. The Analysis states that the amendments would subject small broker-dealers to additional recordkeeping and disclosure requirements. The Analysis states that the Commission did not receive any comments concerning the Initial Regulatory Flexibility Analysis. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Michael P. Jamroz, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 272–2398.

III. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and, particularly, sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78*o*(c)(3), 78q, and 78w, the Commission is adopting amendments to 240.15c3–3 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Securities.

Text of Amendments

In accordance with the foregoing, 17 CFR Part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w * * *. Section 240.15c3–3 is also issued under secs. 15(c)(3) and 17(a), 15 U.S.C. 78*o*(c)(3) and 78*q*(a).

2. By adding paragraph (b)(4) to § 240.15c3–3 as follows:

§ 240.15c3–3 Customer protection reserves and custody of securities.

* * * * *

(b) * * *

(4)(i) Notwithstanding paragraph (k)(2)(i) of this section, a broker or dealer that retains custody of securities that are the subject of a repurchase agreement between the broker or dealer and a counterparty shall:

(A) Obtain the repurchase agreement in writing;

(B) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the trading day on which the transaction is intitiated and at the end of any other day during which other securities are substituted if the substitution results in a change to issuer, maturity date, par amount or coupon rate as specified in the previous confirmation;

(C) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 do not protect the counterparty with respect to the repurchase agreement;

(D) Maintain possession or control of securities that are the subject of the agreement.

(ii) For purpose of this paragraph (b)(4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of § 240.15c3–3 (c)(1), (c)(3), (c)(5) or (c)(6) of this title.

(iii) A broker or dealer shall not be in violation of the requirement to maintain possession or control pursuant to paragraph (b)(4)(i)(D) during the trading day if:

(A) In the written repurchase agreement, the counterparty grants the broker or dealer the right to substitute other securities for those subject to the agreement; and

(B) The provision in the written repurchase agreement governing the right, if any, to substitute is immediately preceded by the following disclosure

statement, which must be prominently displayed:

Required Disclosure

The [seller] is not permitted to substitute other securities for those subject to this agreement and therefore must keep the [buyer's] securities segregated at all times, unless in this agreement the [buyer] grants the [seller] the right to substitute other securities. If the [buyer] grants the right to substitute, this means that the [buyer's] securities will likely be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to its clearing bank and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy the clearing lien or to obtain substitute securities.

(iv) A confirmation issued in accordance with paragraph (b)(4)(i)(B) of this section shall specify the issuer, maturity date, coupon rate, par amount and market value of the security and shall further identify a CUSIP or mortgage-backed security pool number, as appropriate, except that a CUSIP or a pool number is not required on the confirmation if it is identified in internal records of the broker or dealer that designate the specific security of the counterparty. For purposes of this paragraph (b)(4)(iv), the market value of any security that is the subject of the repurchase transaction shall be the most recently available bid price plus accrued interest, obtained by any reasonable and consistent methodology.

(v) This paragraph (b)(4) shall not apply to a repurchase agreement between the broker or dealer and another broker or dealer (including a government securities broker or dealer), a registered municipal securities dealer, or a general partner or director or principal officer of the broker or dealer or any person to the extent that his claim is explicitly subordinated to the claims of creditors of the broker or dealer.

3. By amending § 240.15c3-3a by revising item 9 as follows:

§ 240.15c3-3a Exhibit A—formula for determination of reserve requirement of brokers and dealers under § 240.15c3-3.

* * * * *

	Debits	Credits
* * * * *		
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days..	XXX	
* * * * *		

By the Commission.
August 6, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-18478 Filed 8-13-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM87-34-000; Order No. 500]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: August 7, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule and statement of policy.

SUMMARY: On June 23, 1987, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Associated Gas Distributors* v. FERC (AGD),[1] generally upholding the substance of Order No. 436.[2] However, the Court "found problems in a few of the Order's components" [3] and, due to the interrelationship of the rule's provisions, vacated Order No. 436 and remanded the matter for further proceedings.

This order responds to the Court's concerns about Order No. 436 on an interim basis while the Commission undertakes a thorough examination of the aspects of that order about which the Court expressed concern. As part of this examination, the Commission will seek data from industry participants in order to make an accurate and reliable assessment of current market conditions. This interim rule, however, should avoid any uncertainty that would otherwise exist as to the applicable transportation regulations so as to avoid any interruption in transportation services while the Commission is developing and considering permanent rules responsive to the Court's concerns.

The Commission believes that this interim rule is responsive to the Court's concerns in *AGD* regarding pipeline take-or-pay problems, and meets the standards for an interim rule without notice and comment as set out in the Court's recent opinion in *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, No. 86-1414 (D.C. Cir. June 1987) (Mid-Tex).[4]

Guided by the standards in *Mid-Tex*, the Commission has structured this interim rule to take the initial steps to correct the problems identified by the Courts in *AGD* while the Commission conducts a more thorough examination of the issues before developing a final rule. Accordingly, in this interim rule, the Commission readopts the regulations originally promulgated by Order No. 436 (including the grandfathering provisions), with the following modifications: (1) In order to permit pipelines to minimize the incurrence of take-or-pay liability because of open-access transportation under these regulations, a producer must offer to credit gas transported by a pipeline against that pipeline's take-or-pay liability to the producer accruing under certain pre-June 23, 1987, gas purchase contracts; (2) in order to provide for equitable sharing, between pipelines and their customers, of the costs of settling already accrued take-or-pay obligations and reforming existing contracts, the Commission adopts a policy as to the acceptable mechanisms for the passthrough of take-or-pay buyout and buydown costs; (3) in order to avoid the future recurrence of the kind of take-or-pay problems that exist today, the Commission adopts principles on which pipelines may base future gas supply charges; and (4) while the Commission compiles a record to justify contract demand reductions the Commission eliminates the contract demand reduction option in former § 284.10(c) of its regulations but in order to maintain some meaningful access to transportation for sales customers, the Commission retains the contract conversion option in former § 284.10(d) of its regulations.

DATES: The Commission will request the Court's permission to make this interim rule effective immediately upon issuance of the Court's mandate or the

[1] No. 85-18111, *et al.*

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Order No. 436), 50 FR 42408 (October 18, 1985), (Reg. Preambles 1982-1985) FERC Stats. & Regs. ¶ 30,665 (October 9, 1985), *modified*, Order No. 436-A, 50 FR 52217 (December 23, 1985), *modified further*, Order No. 436-B, 51 FR 6398 (February 24, 1986), III FERC Stats. & Regs. ¶ 30,688 (February 14, 1986), *reh'g denied*, Order No. 436-D, 34 FERC ¶ 61,405 (March 28, 1986), *reconsideration denied*, Order No. 436-E, 34 FERC ¶ 61,403 (March 28, 1986).

[3] Slip op. at 124.

[4] In *Mid-Tex*, the Court reviewed the Commission's interim rule repromulgating the construction work in progress (CWIP) rule for electric utilities that had previously been vacated and remanded by the Court. *See Mid-Tex Electric Cooperative Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985).